

**DISTRICT COURT OF THE VIRGIN ISLANDS**

**DIVISION OF ST. CROIX**

**KATHY ORTIZ,**

**Plaintiff,**

**v.**

**2007-CV-0032**

**KMART CORPORATION,**

**Defendant/Third-Party Plaintiff,**

**v.**

**SUNSHINE SHOPPING CENTER, INC.,**

**Third-Party Defendant.**

**TO: Joel H. Holt, Esq.**  
**Wilfredo A. Geigel, Esq.**  
**Patrick D. Blake, Esq.**

**ORDER GRANTING THIRD-PARTY DEFENDANT'S MOTION TO AMEND THE  
SCHEDULING ORDER**

THIS MATTER came before the Court upon Third-Party Defendant Sunshine Shopping Center's Motion to Amend the Scheduling Order (Docket No. 33). Defendant/Third-Party Plaintiff Kmart Corporation (Kmart) moved to join said motion. Plaintiff filed an opposition to said motion, and Third-Party Defendant Sunshine Shopping

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Center (Sunshine) filed a reply thereto. Plaintiff also filed a response to Kmart's motion for joinder.

According to Rule 16(b) of the Federal Rules of Civil Procedure, scheduling orders may be modified "only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4). The Court has declared that "[t]o establish 'good cause'" under Rule 16(b)(4), 'the moving party must demonstrate that a more diligent pursuit of discovery was impossible. In addition, courts consider whether granting the extension would prejudice the non-moving party.'" *Unlimited Holdings, Inc. v. Bertram Yacht, Inc.*, Civil 2005-46, 2008 WL 4642191 at \*6 (D.V.I. October 15, 2008) (quoting *Crossley v. Elliot*, 2008 WL 2944667 at \*1 (D.V.I. July 25, 2008) (internal quotation omitted)).

As Sunshine notes, it only appeared in this matter on December 31, 2008. Motion at 1. Since that time, it diligently has pursued discovery, but responses to written discovery from Plaintiff were delayed and responses from Kmart remain outstanding. In addition, Sunshine claims that it attempted to schedule depositions in March, but counsel for Plaintiff was unavailable. Reply at 2.

Nothing in Plaintiff's opposition demonstrates how Plaintiff would be prejudiced if the deadlines were extended for a brief, five (5)- month period. Consequently, the Court

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finds that Sunshine has established good cause for modifying the scheduling order and will grant its motion.

WHEREFORE, it is now hereby **ORDERED**:

1. Third-Party Defendant Sunshine Shopping Center's Motion to Amend the Scheduling Order (Docket No. 33) is **GRANTED**.
2. Defendant/Third-Party Plaintiff's Motion For Joinder in Sunshine's Motion to Amend Scheduling Order (Docket No. 36) is **GRANTED**.
3. The Scheduling Order (Docket No. 22), entered January 21, 2009, is hereby **VACATED**.
4. The parties shall adhere to the following schedule:
  - a. All factual discovery, including written discovery and fact witness depositions, shall be completed on or before **September 30, 2009**.
  - b. Plaintiff's expert disclosures pursuant to Fed. R. Civ. P. 26(a)(2) shall be submitted on or before **October 15, 2009**.
  - c. Defendants' expert disclosures pursuant to Fed. R. Civ. P. 26(a)(2) shall be submitted on or before **November 13, 2009**.
  - d. Expert depositions shall be completed on or before **December 15, 2009**.

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- e. Mediation shall be completed on or before **November 30, 2009**.
- f. All dispositive motions, including *Daubert* motions, shall be filed on or before **December 31, 2009**.
- g. All motions *in limine* shall be filed at least twenty-one (21) days before the Monday of jury selection week, with any responses due within five (5) days of service thereof and any reply within three (3) days of service of the response.
- h. Plaintiff shall complete and deliver to counsel for Defendants her portion of the proposed Joint Final Pretrial Order on or before **January 15, 2010**.
- i. Defendants shall complete its portion of the proposed Joint Final Pretrial Order by **January 29, 2010**.
- j. The proposed Joint Final Pretrial Order shall be filed with the Court, in accordance with LRCi 16.1(b) by **February 5, 2010**.
- k. The exhibit list deadline is **February 5, 2010**.
- l. The expert witness list deadline is **February 5, 2010**.
- m. A status conference is scheduled for **December 4, 2009, at 11:00 a.m.**

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- n. A final pretrial conference is scheduled at Magistrate's Chambers for **February 8, 2010, at 11:00 a.m.**
  - o. Trial shall commence **March 1, 2010, at 9:30 a.m.** and shall take two (2) to three (3) days. This date may be continued if there are pending dispositive motions or a criminal trial that takes precedence.
4. **No further extensions of time will be granted.**

ENTER:

Dated: May 20, 2008

/s/ George W. Cannon, Jr.  
GEORGE W. CANNON, JR.  
U.S. MAGISTRATE JUDGE